SPS. FELIPE AND LETICIA CANNU, PETITIONERS, VS. SPS. GIL AND FERNANDINA GALANG AND NATIONAL HOME MORTGAGE FINANCE CORPORATION, RESPONDENTS.

G.R. No. 139523. May 26, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari which seeks to set aside the decision[1] of the Court of Appeals dated 30 September 1998 which affirmed with modification the decision of Branch 135 of the Regional Trial Court (RTC) of Makati City, dismissing the complaint for Specific Performance and Damages filed by petitioners, and its Resolution[2] dated 22 July 1999 denying petitioners' motion for reconsideration.

A complaint[3] for Specific Performance and Damages was filed by petitioners-spouses Felipe and Leticia Cannu against respondents-spouses Gil and Fernandina Galang and the National Home Mortgage Finance Corporation (NHMFC) before Branch 135 of the RTC of Makati, on 24 June 1993. The case was docketed as Civil Case No. 93-2069.

The facts that gave rise to the aforesaid complaint are as follows:

Respondents-spouses Gil and Fernandina Galang obtained a loan from Fortune Savings & Loan Association for P173,800.00 to purchase a house and lot located at Pulang Lupa, Las Piñas, with an area of 150 square meters covered by Transfer Certificate of Title (TCT) No. T-8505 in the names of respondents-spouses. To secure payment, a real estate mortgage was constituted on the said house and lot in favor of Fortune Savings & Loan Association. In early 1990, NHMFC purchased the mortgage loan of respondents-spouses from Fortune Savings & Loan Association for P173,800.00.

Respondent Fernandina Galang authorized[4] her attorney-in-fact, Adelina R. Timbang, to sell the subject house and lot.

Petitioner Leticia Cannu agreed to buy the property for P120,000.00 and to assume the balance of the mortgage obligations with the NHMFC and with CERF Realty[5] (the Developer of the property).

Of the P120,000.00, the following payments were made by petitioners:

Date	Amount Paid
July 19, 1990	P40,000.00[6]
March 13, 1991	

15,000.00[7]

April 6, 1991

15,000.00[8]

November 28, 1991

5,000.00[9]

Total

P75,000.00

Thus, leaving a balance of P45,000.00.

A Deed of Sale with Assumption of Mortgage Obligation[10] dated 20 August 1990 was made and entered into by and between spouses Fernandina and Gil Galang (vendors) and spouses Leticia and Felipe Cannu (vendees) over the house and lot in question which contains, inter alia, the following:

NOW, THEREFORE, for and in consideration of the sum of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00), Philippine Currency, receipt of which is hereby acknowledged by the Vendors and the assumption of the mortgage obligation, the Vendors hereby sell, cede and transfer unto the Vendees, their heirs, assigns and successor in interest the above-described property together with the existing improvement thereon.

It is a special condition of this contract that the Vendees shall assume and continue with the payment of the amortization with the National Home Mortgage Finance Corporation Inc. in the outstanding balance of P_____, as of _____ and shall comply with and abide by the terms and conditions of the mortgage document dated Feb. 27, 1989 and identified as Doc. No. 82, Page 18, Book VII, S. of 1989 of Notary Public for Quezon City Marites Sto. Tomas Alonzo, as if the Vendees are the original signatories.

Petitioners immediately took possession and occupied the house and lot.

Petitioners made the following payments to the NHMFC:

Date

Amount

Receipt No.

July 9, 1990 P 14,312.47 D-503986[11]

March 12, 1991 8,000.00 D-729478[12]

February 4, 1992 10,000.00 D-999127[13]

March 31, 1993 6,000.00 E-563749[14]

April 19, 1993 10,000.00 E-582432[15]

April 27, 1993 7,000.00 E-618326[16]

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P 55,312.47

Petitioners paid the “equity” or second mortgage to CERF Realty.[17]

Despite requests from Adelina R. Timbang and Fernandina Galang to pay the balance of P45,000.00 or in the alternative to vacate the property in question, petitioners refused to do so.

In a letter[18] dated 29 March 1993, petitioner Leticia Cannu informed Mr. Fermin T. Arzaga, Vice President, Fund Management Group of the NHMFC, that the ownership rights over the land covered by TCT No. T-8505 in the names of respondents-spouses had been ceded and transferred to her and her husband per Deed of Sale with Assumption of Mortgage, and that they were obligated to assume the mortgage and pay the remaining unpaid loan balance. Petitioners’ formal assumption of mortgage was not approved by the NHMFC.[19]

Because the Cannus failed to fully comply with their obligations, respondent Fernandina Galang, on 21 May 1993, paid P233,957.64 as full payment of her remaining mortgage loan with NHMFC.[20]

Petitioners opposed the release of TCT No. T-8505 in favor of respondents-spouses insisting that the subject property had already been sold to them. Consequently, the NHMFC held in abeyance the release of said TCT.

Thereupon, a Complaint for Specific Performance and Damages was filed asking, among other things, that petitioners (plaintiffs therein) be declared the owners of the property involved subject to reimbursements of the amount made by respondents-spouses (defendants therein) in preterminating the mortgage loan with NHMFC.

Respondent NHMFC filed its Answer.[21] It claimed that petitioners have no cause of action against it because they have not submitted the formal requirements to be considered assignees and successors-in-interest of the property under litigation.

In their Answer,[22] respondents-spouses alleged that because of petitioners-spouses’ failure to fully pay the consideration and to update the monthly amortizations with the NHMFC, they paid in full the existing obligations with NHMFC as an initial step in the rescission and annulment of the Deed of Sale with Assumption of Mortgage. In their counterclaim, they maintain that the acts of petitioners in not fully complying with their obligations give rise to rescission of the Deed of Sale with Assumption of Mortgage with the corresponding damages.

After trial, the lower court rendered its decision ratiocinating:

> On the basis of the evidence on record, testimonial and documentary, this Court is of the view that plaintiffs have no cause of action either against the spouses Galang or the NHMFC. Plaintiffs have admitted on record they failed to pay the amount of P45,000.00 the balance due to the Galangs in consideration of the Deed of Sale With Assumption of Mortgage Obligation (Exhs. “C” and “3”). Consequently, this is a breach of contract and evidently a failure to comply with obligation arising from contracts. . . In this case, NHMFC has not been duly informed due to lack of formal requirements to acknowledge plaintiffs as legal assignees, or legitimate tranferees and, therefore, successors-in-interest to the property, plaintiffs should have no legal personality to claim any right to the same property.[23]

The decretal portion of the decision reads:

> Premises considered, the foregoing complaint has not been proven even by preponderance of evidence, and, as such, plaintiffs have no cause of action against the defendants herein. The above-entitled case is ordered dismissed for lack of merit.
>
> Judgment is hereby rendered by way of counterclaim, in favor of defendants and against plaintiffs, to wit:
>
> - Ordering the Deed of Sale With Assumption of Mortgage Obligation (Exhs. “C” and “3”) rescinded and

hereby declared the same as nullified without prejudice for defendants-spouses Galang to return the partial payments made by plaintiffs; and the plaintiffs are ordered, on the other hand, to return the physical and legal possession of the subject property to spouses Galang by way of mutual restitution;

- To pay defendants spouses Galang and NHMFC, each the amount of P10,000.00 as litigation expenses, jointly and severally;

- To pay attorney's fees to defendants in the amount of P20,000.00, jointly and severally; and

- The costs of suit.

- No moral and exemplary damages awarded.[24]

A Motion for Reconsideration[25] was filed, but same was denied. Petitioners appealed the decision of the RTC to the Court of Appeals. On 30 September 1998, the Court of Appeals disposed of the appeal as follows:

Obligations arising from contract have the force of law between the contracting parties and should be complied in good faith. The terms of a written contract are binding on the parties thereto.

Plaintiffs-appellants therefore are under obligation to pay defendants-appellees spouses Galang the sum of P250,000.00, and to assume the mortgage.

Records show that upon the execution of the Contract of Sale or on July 19, 1990 plaintiffs-appellants paid defendants-appellees spouses Galang the amount of only P40,000.00.

The next payment was made by plaintiffs-appellants on March 13, 1991 or eight (8) months after the execution of the contract. Plaintiffs-appellants paid the amount of P5,000.00.

The next payment was made on April 6, 1991 for P15,000.00 and on November 28, 1991, for another P15,000.00.

From 1991 until the present, no other payments were made by plaintiffs-appellants to defendants-appellees spouses Galang.

Out of the P250,000.00 purchase price which was supposed to be paid on the day of the execution of contract in July, 1990 plaintiffs-appellants have paid, in the span of eight (8) years, from 1990 to present, the amount of only P75,000.00. Plaintiffs-appellants should have paid the P250,000.00 at the time of the execution of contract in 1990. Eight (8) years have already lapsed and plaintiffs-appellants have not yet complied with their obligation.

We consider this breach to be substantial.

The tender made by plaintiffs-appellants after the filing of this case, of the Managerial Check in the amount of P278,957.00 dated January 24, 1994 cannot be considered as an effective mode of payment.

Performance or payment may be effected not by tender of payment alone but by both tender and consignation. It is consignation which is essential in order to extinguish plaintiffs-appellants obligation to pay the balance of the purchase price.

In addition, plaintiffs-appellants failed to comply with their obligation to pay the monthly amortizations due on the mortgage.

In the span of three (3) years from 1990 to 1993, plaintiffs-appellants made only six payments. The payments made by plaintiffs-appellants are not even sufficient to answer for the arrearages, interests and penalty charges.

On account of these circumstances, the rescission of the Contract of Sale is warranted and justified.

> . . .
>
> WHEREFORE, foregoing considered, the appealed decision is hereby AFFIRMED with modification. Defendants-appellees spouses Galang are hereby ordered to return the partial payments made by plaintiff-appellants in the amount of P135,000.00.
>
> No pronouncement as to cost.[26]

The motion for reconsideration[27] filed by petitioners was denied by the Court of Appeals in a Resolution[28] dated 22 July 1999.

Hence, this Petition for Certiorari.

Petitioners raise the following assignment of errors:

> - THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT PETITIONERS' BREACH OF THE OBLIGATION WAS SUBSTANTIAL.
>
> - THE HONORABLE COURT OF APPEALS ERRED WHEN IN EFFECT IT HELD THAT THERE WAS NO SUBSTANTIAL COMPLIANCE WITH THE OBLIGATION TO PAY THE MONTHLY AMORTIZATION WITH NHMFC.
>
> - THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THE OTHER FACTS AND CIRCUMSTANCES THAT MILITATE AGAINST RESCISSION.
>
> - THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THAT THE ACTION FOR RESCISSION IS SUBSIDIARY.[29]

Before discussing the errors allegedly committed by the Court of Appeals, it must be stated a priori that the latter made a misappreciation of evidence regarding the consideration of the property in litigation when it relied solely on the Deed of Sale with Assumption of Mortgage executed by the respondents-spouses Galang and petitioners-spouses Cannu.

As above-quoted, the consideration for the house and lot stated in the Deed of Sale with Assumption of Mortgage is P250,000.00, plus the assumption of the balance of the mortgage loan with NHMFC. However, after going over the record of the case, more particularly the Answer of respondents-spouses, the evidence shows the consideration therefor is P120,000.00, plus the payment of the outstanding loan mortgage with NHMFC, and of the "equity" or second mortgage with CERF Realty (Developer of the property).[30]

Nowhere in the complaint and answer of the petitioners-spouses Cannu and respondents-spouses Galang shows that the consideration is "P250,000.00." In fact, what is clear is that of the P120,000.00 to be paid to the latter, only P75,000.00 was paid to Adelina Timbang, the spouses Galang's attorney-in-fact. This debunks the provision in the Deed of Sale with Assumption of Mortgage that the amount of P250,000.00 has been received by petitioners.

Inasmuch as the Deed of Sale with Assumption of Mortgage failed to express the true intent and agreement of the parties regarding its consideration, the same should not be fully relied upon. The foregoing facts lead us to hold that the case on hand falls within one of the recognized exceptions to the parole evidence rule. Under the Rules of Court, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading, among others, its failure to express the true intent and agreement of the parties thereto.[31]

In the case at bar, when respondents-spouses enumerated in their Answer the terms and conditions for the sale of the property under litigation, which is different from that stated in the Deed of Sale with Assumption with

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Mortgage, they already put in issue the matter of consideration. Since there is a difference as to what the true consideration is, this Court has admitted evidence aliunde to explain such inconsistency. Thus, the Court has looked into the pleadings and testimonies of the parties to thresh out the discrepancy and to clarify the intent of the parties.

As regards the computation[32] of petitioners as to the breakdown of the P250,000.00 consideration, we find the same to be self-serving and unsupported by evidence.

On the first assigned error, petitioners argue that the Court erred when it ruled that their breach of the obligation was substantial.

Settled is the rule that rescission or, more accurately, resolution,[33] of a party to an obligation under Article 1191[34] is predicated on a breach of faith by the other party that violates the reciprocity between them.[35] Article 1191 reads:

> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

Rescission will not be permitted for a slight or casual breach of the contract. Rescission may be had only for such breaches that are substantial and fundamental as to defeat the object of the parties in making the agreement.[36] The question of whether a breach of contract is substantial depends upon the attending circumstances[37] and not merely on the percentage of the amount not paid.

In the case at bar, we find petitioners' failure to pay the remaining balance of P45,000.00 to be substantial. Even assuming arguendo that only said amount was left out of the supposed consideration of P250,000.00, or eighteen (18%) percent thereof, this percentage is still substantial. Taken together with the fact that the last payment made was on 28 November 1991, eighteen months before the respondent Fernandina Galang paid the outstanding balance of the mortgage loan with NHMFC, the intention of petitioners to renege on their obligation is utterly clear.

Citing Massive Construction, Inc. v. Intermediate Appellate Court,[38] petitioners ask that they be granted additional time to complete their obligation. Under the facts of the case, to give petitioners additional time to comply with their obligation will be putting premium on their blatant non-compliance of their obligation. They had all the time to do what was required of them (i.e., pay the P45,000.00 balance and to properly assume the mortgage loan with the NHMFC), but still they failed to comply. Despite demands for them to pay the balance, no payments were made.[39]

The fact that petitioners tendered a Manager's Check to respondents-spouses Galang in the amount of P278,957.00 seven months after the filing of this case is of no moment. Tender of payment does not by itself produce legal payment, unless it is completed by consignation.[40] Their failure to fulfill their obligation gave the respondents-spouses Galang the right to rescission.

Anent the second assigned error, we find that petitioners were not religious in paying the amortization with the NHMFC. As admitted by them, in the span of three years from 1990 to 1993, their payments covered only thirty months.[41] This, indeed, constitutes another breach or violation of the Deed of Sale with Assumption of

Mortgage. On top of this, there was no formal assumption of the mortgage obligation with NHMFC because of the lack of approval by the NHMFC[42] on account of petitioners' non-submission of requirements in order to be considered as assignees/successors-in-interest over the property covered by the mortgage obligation.[43]

On the third assigned error, petitioners claim there was no clear evidence to show that respondents-spouses Galang demanded from them a strict and/or faithful compliance of the Deed of Sale with Assumption of Mortgage.

We do not agree.

There is sufficient evidence showing that demands were made from petitioners to comply with their obligation. Adelina R. Timbang, attorney-in-fact of respondents-spouses, per instruction of respondent Fernandina Galang, made constant follow-ups after the last payment made on 28 November 1991, but petitioners did not pay.[44] Respondent Fernandina Galang stated in her Answer[45] that upon her arrival from America in October 1992, she demanded from petitioners the complete compliance of their obligation by paying the full amount of the consideration (P120,000.00) or in the alternative to vacate the property in question, but still, petitioners refused to fulfill their obligations under the Deed of Sale with Assumption of Mortgage. Sometime in March 1993, due to the fact that full payment has not been paid and that the monthly amortizations with the NHMFC have not been fully updated, she made her intentions clear with petitioner Leticia Cannu that she will rescind or annul the Deed of Sale with Assumption of Mortgage.

We likewise rule that there was no waiver on the part of petitioners to demand the rescission of the Deed of Sale with Assumption of Mortgage. The fact that respondents-spouses accepted, through their attorney-in-fact, payments in installments does not constitute waiver on their part to exercise their right to rescind the Deed of Sale with Assumption of Mortgage. Adelina Timbang merely accepted the installment payments as an accommodation to petitioners since they kept on promising they would pay. However, after the lapse of considerable time (18 months from last payment) and the purchase price was not yet fully paid, respondents-spouses exercised their right of rescission when they paid the outstanding balance of the mortgage loan with NHMFC. It was only after petitioners stopped paying that respondents-spouses moved to exercise their right of rescission.

Petitioners cite the case of Angeles v. Calasanz[46] to support their claim that respondents-spouses waived their right to rescind. We cannot apply this case since it is not on all fours with the case before us. First, in Angeles, the breach was only slight and casual which is not true in the case before us. Second, in Angeles, the buyer had already paid more than the principal obligation, while in the instant case, the buyers (petitioners) did not pay P45,000.00 of the P120,000.00 they were obligated to pay.

We find petitioners' statement that there is no evidence of prejudice or damage to justify rescission in favor of respondents-spouses to be unfounded. The damage suffered by respondents-spouses is the effect of petitioners' failure to fully comply with their obligation, that is, their failure to pay the remaining P45,000.00 and to update the amortizations on the mortgage loan with the NHMFC. Petitioners have in their possession the property under litigation. Having parted with their house and lot, respondents-spouses should be fully compensated for it, not only monetarily, but also as to the terms and conditions agreed upon by the parties. This did not happen in the case before us.

Citing Seva v. Berwin & Co., Inc.,[47] petitioners argue that no rescission should be decreed because there is no evidence on record that respondent Fernandina Galang is ready, willing and able to comply with her own obligation to restore to them the total payments they made. They added that no allegation to that effect is contained in respondents-spouses' Answer.

We find this argument to be misleading.

First, the facts obtaining in Seva case do not fall squarely with the case on hand. In the former, the failure of one party to perform his obligation was the fault of the other party, while in the case on hand, failure on the part of petitioners to perform their obligation was due to their own fault.

Second, what is stated in the book of Justice Edgardo L. Paras is "[i]t (referring to the right to rescind or resolve) can be demanded only if the plaintiff is ready, willing and able to comply with his own obligation, and the other is not." In other words, if one party has complied or fulfilled his obligation, and the other has not, then the former can exercise his right to rescind. In this case, respondents-spouses complied with their obligation when they gave the possession of the property in question to petitioners. Thus, they have the right to ask for the rescission of the Deed of Sale with Assumption of Mortgage.

On the fourth assigned error, petitioners, relying on Article 1383 of the Civil Code, maintain that the Court of Appeals erred when it failed to consider that the action for rescission is subsidiary.

Their reliance on Article 1383 is misplaced.

The subsidiary character of the action for rescission applies to contracts enumerated in Articles 1381[48] of the Civil Code. The contract involved in the case before us is not one of those mentioned therein. The provision that applies in the case at bar is Article 1191.

In the concurring opinion of Justice Jose B.L. Reyes in Universal Food Corp. v. Court of Appeals,[49] rescission under Article 1191 was distinguished from rescission under Article 1381. Justice J.B.L. Reyes said:

> . . . The rescission on account of breach of stipulations is not predicated on injury to economic interests of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations by the defendant. This rescission is a principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promises when the other violates his. As expressed in the old Latin aphorism: "Non servanti fidem, non est fides servanda." Hence, the reparation of damages for the breach is purely secondary.
>
> On the contrary, in the rescission by reason of lesion or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the raison d être as well as the measure of the right to rescind. Hence, where the defendant makes good the damages caused, the action cannot be maintained or continued, as expressly provided in Articles 1383 and 1384. But the operation of these two articles is limited to the cases of rescission for lesion enumerated in Article 1381 of the Civil Code of the Philippines, and does not apply to cases under Article 1191.

From the foregoing, it is clear that rescission ("resolution" in the Old Civil Code) under Article 1191 is a principal action, while rescission under Article 1383 is a subsidiary action. The former is based on breach by the other party that violates the reciprocity between the parties, while the latter is not.

In the case at bar, the reciprocity between the parties was violated when petitioners failed to fully pay the balance of P45,000.00 to respondents-spouses and their failure to update their amortizations with the NHMFC.

Petitioners maintain that inasmuch as respondents-spouses Galang were not granted the right to unilaterally rescind the sale under the Deed of Sale with Assumption of Mortgage, they should have first asked the court for the rescission thereof before they fully paid the outstanding balance of the mortgage loan with the NHMFC. They claim that such payment is a unilateral act of rescission which violates existing jurisprudence.

In Tan v. Court of Appeals,[50] this court said:

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> . . . [T]he power to rescind obligations is implied in reciprocal ones in case one of the obligors should not comply with what is incumbent upon him is clear from a reading of the Civil Code provisions. However, it is equally settled that, in the absence of a stipulation to the contrary, this power must be invoked judicially; it cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation. Where there is nothing in the contract empowering the petitioner to rescind it without resort to the courts, the petitioner's action in unilaterally terminating the contract in this case is unjustified.1

It is evident that the contract under consideration does not contain a provision authorizing its extrajudicial rescission in case one of the parties fails to comply with what is incumbent upon him. This being the case, respondents-spouses should have asked for judicial intervention to obtain a judicial declaration of rescission. Be that as it may, and considering that respondents-spouses' Answer (with affirmative defenses) with Counterclaim seeks for the rescission of the Deed of Sale with Assumption of Mortgage, it behooves the court to settle the matter once and for all than to have the case re-litigated again on an issue already heard on the merits and which this court has already taken cognizance of. Having found that petitioners seriously breached the contract, we, therefore, declare the same is rescinded in favor of respondents-spouses.

As a consequence of the rescission or, more accurately, resolution of the Deed of Sale with Assumption of Mortgage, it is the duty of the court to require the parties to surrender whatever they may have received from the other. The parties should be restored to their original situation.[51]

The record shows petitioners paid respondents-spouses the amount of P75,000.00 out of the P120,000.00 agreed upon. They also made payments to NHMFC amounting to P55,312.47. As to the petitioners' alleged payment to CERF Realty of P46,616.70, except for petitioner Leticia Cannu's bare allegation, we find the same not to be supported by competent evidence. As a general rule, one who pleads payment has the burden of proving it.[52] However, since it has been admitted in respondents-spouses' Answer that petitioners shall assume the second mortgage with CERF Realty in the amount of P35,000.00, and that Adelina Timbang, respondents-spouses' very own witness, testified[53] that same has been paid, it is but proper to return this amount to petitioners. The three amounts total P165,312.47 -- the sum to be returned to petitioners.

WHEREFORE, premises considered, the decision of the Court of Appeals is hereby AFFIRMED with MODIFICATION. Spouses Gil and Fernandina Galang are hereby ordered to return the partial payments made by petitioners in the amount of P165,312.47. With costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Tinga, J., out of the country.

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[1] CA Rollo, pp. 50-56; Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Jesus M. Elbinias and Marina L. Buzon, concurring.

[2] Id., at 77.

[3] Records, pp. 1-12.

[4] Exh. A; Records, p. 141.

[5] The records do not disclose the nature of the transaction between respondents-spouses and CERF Realty.

[6] Exh. G-1; Records, p. 149.

[7] Exh. G-3; Id., p. 150.

[8] Exh. G-4; Id., p. 152.

[9] Exh. G-2; Id., p. 150.

[10] Exh. C; Records, pp. 144-145.

[11] Exh. I-1; Id., p. 154.

[12] Exh. I-3; Id., p. 155.

[13] Exh. I-6; Id., p. 157.

[14] Exh. I-2; Id., p. 155.

[15] Exh. I-5; Id., p. 156.

[16] Exh. I-4; Id.

[17] TSN, 13 October 1994, pp. 41-42.

[18] Exh. F; Records, p. 148.

[19] TSN, 13 October 1994, p. 37; Answer with Affirmative Defense of NHMFC, Records, p. 29.

[20] Exhs. L and L-1; Records, p. 162.

[21] Records, pp. 28-30.

[22] Id., pp. 38-45.

[23] Rollo, pp. 60-61.

[24] Rollo, pp. 61-62.

[25] Records, p. 229.

[26] Rollo, pp. 38-40.

[27] Id., pp. 57-68.

[28] Id., p. 77.

[29] Rollo, pp. 18-19.

[30] TSN, 13 October 1994, pp. 41-42; 09 November 1994, p. 19; Complaint, p. 2, Records, p. 2; Answer of Respondents-spouses Galang, p. 3, Records, p. 40.

[31] American Home Assurance Co. v. Tantuco Enterprises, Inc., G.R. No. 138941, 08 October 2001, 366 SCRA 740, 746-747.

[32] Exh. H; Records, p. 153.

[33] As used in the Old Civil Code.

[34] Civil Code.

[35] Uy v. Court of Appeals, G.R. No. 120465, 09 September 1999, 314 SCRA 69, 81; Romero v. Court of Appeals, G.R. No. 107207, 23 November 1995, 250 SCRA 223, 235.

[36] Ang v. Court of Appeals, G.R. No. 80058, 13 February 1989, 170 SCRA 286, 296; Tan v. Court of Appeals, G.R. No. 80479, 28 July 1989, 175 SCRA 656, 663.

[37] Intestate Estate of the Late Ricardo P. Presbitero, Sr. v. Court of Appeals, G.R. No. 102432, 21 January 1993, 217 SCRA 372, 384.

[38] G.R. Nos. 70310-11, 01 June 1993, 223 SCRA 1, 10.

[39] TSN, 09 November 1994, pp. 12, 16.

[40] Philippine National Bank v. Relativo, G.R. No. L-5298, 29 October 1952, 92 Phil. 203, 206.

[41] Rollo, p. 25.

[42] TSN, 13 October 1994, p. 37.

[43] Records, p. 29.

[44] TSN, 09 November 1994, p. 12.

[45] Records, pp. 41-42.

[46] G.R. No. L-42283, 18 March 1985, 135 SCRA 323, 332.

[47] 48 Phil. 581; Civil Code of the Philippines by Paras, Vol. 4 (1994 Ed).

[48] Art. 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;
(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;
(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claim due them;
(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
(5) All other contracts specially declared by law to be subject to rescission.

[49] G.R. No. L-29155, 13 May 1970, 33 SCRA 1, 22-23.

[50] G.R. No. 80479, 28 July 1989, 175 SCRA 656, 661-662.

[51] Ang v. Court of Appeals, G.R. No. 80058, 13 February 1989, 170 SCRA 286, 297.

[52] Jimenez v. National Labor Relations Commission, G.R. No. 116960, 02 April 1996, 256 SCRA 84, 89.

[53] TSN, 09 November 1994, p. 19.

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